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Natural Resources Protection Act

Removal of Special Condition #5 – South Bristol

#### STATUTORY REFERENCES & OTHER RULINGS

- NRPA Statute – Standards
- Chapter 310, Wetland and Waterbodies Protection Rules – Section 3. “Water Dependent Use” definition; Section 5. General Standards; and Section 9. Application Requirements
- 2009 ME 89 *Anthony Uliano et al. v. Board of Environmental Protection*

**4. Significant groundwater well.** A person may not perform or cause to be performed the establishment or operation of a significant groundwater well without first obtaining a permit from the department.<sup>4</sup>

→ **§ 480-D. Standards**

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards set forth in subsections 1 to 11, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.<sup>5</sup>

**1. Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind power project, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. In making a decision under this subsection regarding an application for an offshore wind power project, the department may not consider whether the project meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the department's review of related potential impacts of the project as determined by the department.

**2. Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely

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<sup>4</sup> PL 2007, ch. 399(13) provided: "**Sec. 13. Transition.** If a person who requires a permit for establishment or operation of a significant groundwater well from the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 480-C is authorized to transport water pursuant to Title 22, section 2660-A on the effective date of this Act and applies for a permit for establishment or operation of the significant groundwater well prior to expiration of the water transport authorization, the person may continue to withdraw water until final agency action on the permit application."

<sup>5</sup> A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat.

4. **Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

5. **Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

6. **Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

7. **Sand supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

8. **Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

9. **Dredging.**<sup>6</sup> If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of

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<sup>6</sup>Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

**Sec. 2. Application.** This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.  
*This section was later amended by Laws 1999, ch. 248, § 1.*

Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

- A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;
- B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and
- C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

**10. Significant groundwater well.** If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue, unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

**11. Offshore wind power project.** This subsection applies to an offshore wind power project.

A. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate that the generating facilities:

(1) Will meet the requirements of the noise control rules adopted by the board pursuant to article 6;

(2) Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and

(3) Will be constructed with setbacks adequate to protect public safety, while maintaining existing uses to the extent practicable. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities.

B. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate adequate financial capacity to decommission the offshore wind power project.

C. An applicant for an offshore wind power project is not required to demonstrate compliance with requirements of this article that the department determines are addressed by criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6).